

Civil society space: Views of organisations

Conference paper

Contribution to the fourth Annual Colloquium on
Fundamental Rights - November 2018

Civil society organisations (CSOs) play a critical role in democracies, and the importance of their work is widely recognised in international legal and policy documents. However, they face many obstacles when it comes to their day-to-day work, ranging from changes in the legal environment, challenges in finding and accessing resources, to obstacles in accessing policymaking, and threats and attacks. The European Union Agency for Fundamental Rights (FRA) cooperates closely with civil society organisations working on human rights in the European Union. A FRA report from January 2018 looked into the different types and patterns of challenges that CSOs working on human rights face in the EU. In September 2018, FRA carried out an online consultation with its civil society network, the Fundamental Rights Platform (FRP), to complement the findings of its report. The results of the online consultation confirm earlier messages and point to the need to provide civil society with the resources and the 'safe space' that it needs to flourish and operate. This paper summarises the consultation's key findings, including relevant points from FRA's 2018 Fundamental Rights Forum.

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CSOs can activate people across a wide range of social and human rights issues to hold those in power accountable for delivering on their social and human rights commitments, to push for new laws and policies to fulfil these commitments, and to promote goals that are in the public interest. This work, often seen as controversial, is an essential ingredient of democracy, like free speech and elections. It needs a safe and enabling environment.

Major international human rights instruments, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms recognise this. The right to freedom of opinion and expression, and the right to freedom of assembly and association are an essential condition for the exercise of other human rights. In the European Union, the Charter of Fundamental Rights guarantees everyone, under Article 11, the right to freedom of expression without interference by public authority and regardless of frontiers, and under Article 12 the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters.

Article 10 of its [Founding Regulation \(Council Regulation \(EC\) No. 168/2007\)](#) mandates the [European Union Agency for Fundamental Rights \(FRA\)](#) to cooperate closely with civil society. [FRA's Fundamental Rights Platform \(FRP\)](#)

brings together a wide range of civil society organisations, including non-governmental organisations, active in the field of fundamental rights, ranging from grassroots organisations to European umbrella networks, in order to conduct structured and fruitful dialogue and develop close cooperation. In the past years, many of these organisations increasingly voiced concern about legal and practical restrictions that obstruct their work. The agency investigated these concerns, collecting information mainly through its research network [Franet](#)¹ and through expert interviews, exploring the diverse challenges that different civil society organisations operating in the EU face today, and subsequently published in January 2018 a report on the [Challenges facing civil society organisations working on human rights in the EU](#). The report identifies a series of worrying developments and recommends action on a range of issues, as summarised under the respective themes below.

"At a time where European societies are confronted with extremism, radicalism and divisions, it is more important than ever to promote, strengthen and defend justice, rights and EU values. NGOs and civil society play a crucial role in standing up for these European values."

(Věra Jourová, Commissioner for Justice, Consumers and Gender Equality, 'EU budget: A new Social Fund, Globalisation Adjustment Fund and Justice, Rights and Values Fund', Press release, 30 May 2018)

¹ [Franet](#) collected the information between January and February 2017. It was supplemented by additional desk research and reports by the Council of Europe, the United Nations (UN) Special Rapporteur on the rights to freedom of peaceful assembly and of association, the UN Special Rapporteur on the situation of human rights defenders, the European Economic and Social Committee (EESC) and the Open Government Partnership (OGP). In addition, over 40 experts from civil society, foundations and funders, National Human Rights Institutes (NHRIs) and equality bodies, as well as international organisations and public administrations, were consulted.

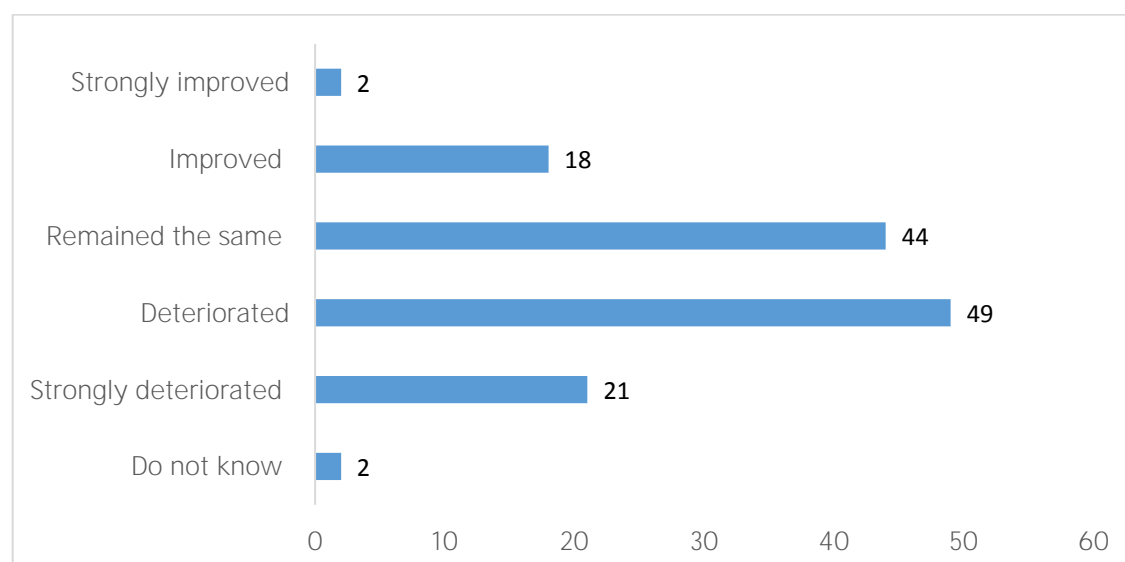
Based on the results of an online consultation carried out with the FRP in September 2018, this paper complements the January 2018 report. 136 diverse civil society organisations registered in the agency’s Fundamental Rights Platform database responded, working across EU countries as well as at EU level on a broad range of human rights issues. The paper also makes reference to some of the outcomes relevant for civic space issues from FRA’s [Fundamental Rights Forum](#), held in September 2018. The consultation as well as Forum outcomes largely confirm the findings of FRA’s January 2018 report and its recommendations, and point to the need to provide civil society with the resources and the ‘safe space’ that it needs to flourish and operate. The Fundamental Rights Agency will continue to support and engage with civil society.

1. Many challenges, but little improvement

FRA’s 2018 report alerted to the diverse challenges that civil society organisations working on human rights are facing in the EU: legal hurdles, harassment of human rights defenders, difficulties in finding and accessing financial resources and difficulties in accessing decision-makers to contribute to law and policy-making.

In the online consultation, more than half of the civil society organisations which responded consider that overall in the past three years the situation for civil society in their country has ‘deteriorated’ or ‘strongly deteriorated’. About one third of the organisations considers that it has remained the same, and only a minority indicates that the general situation has improved (Figure 1).

Figure 1: Perceived change in the general situation by civil society organisations working on human rights (Number of organisations)



Note: Question: “In your country, how has the general situation for civil society organisations working on human rights changed in the past three years (2015-2018)?” (N=136)

Source: FRA, 2018

2. Threats and attacks persist

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by UN General Assembly Resolution 53/144 on 9 December 1998² requires, under **Article 12, Member States to “take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association**

“There are organisations from our membership who regularly face attacks on their offices and are visited by the ‘friends’ from the populist movements.”

(Representative of civil society organisation, EU)

with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”.

FRA’s 2018 report points to evidence that CSOs and human rights activists in EU Member States face

physical and verbal attacks, as well as harassment and intimidation by non-state actors, both on- and offline. Moreover, the report finds that in some cases state officials or the media stigmatise CSOs, discrediting their work. The report recommends that Member States should refrain from stigmatising human rights CSOs and their members, and actively condemn any crimes – including hate crimes – committed against CSOs and their members. Data on hate crimes against human rights CSOs should be collected and published.

The consultation asked CSOs if, in the last three years, any of their staff or volunteers faced threats and/or attacks because of their work for the organisation. More than half replied that they had experienced this – 13 “often”, 27 “sometimes” and 19 “rarely”. Most CSOs reported mainly verbal and online threats and attacks or being targeted by negative media campaigns and digital security threats. However, as many as 15 organisations said that their staff or volunteers had been physically attacked for reasons linked to their work. Furthermore, 20 organisations reported damage to their premises (such as vandalism, graffiti and broken windows). At the same time, only a quarter of the organisations that experienced such incidents reported them to the authorities. Organisations also pointed to challenges in the areas of digital security, and indicated that employees’ and volunteers’ (psycho-social) wellbeing often suffers due to their experiences at work.

“Some of our employees have been verbally threatened and/or attacked by police when accompanying asylum seekers for lodging the asylum application.”

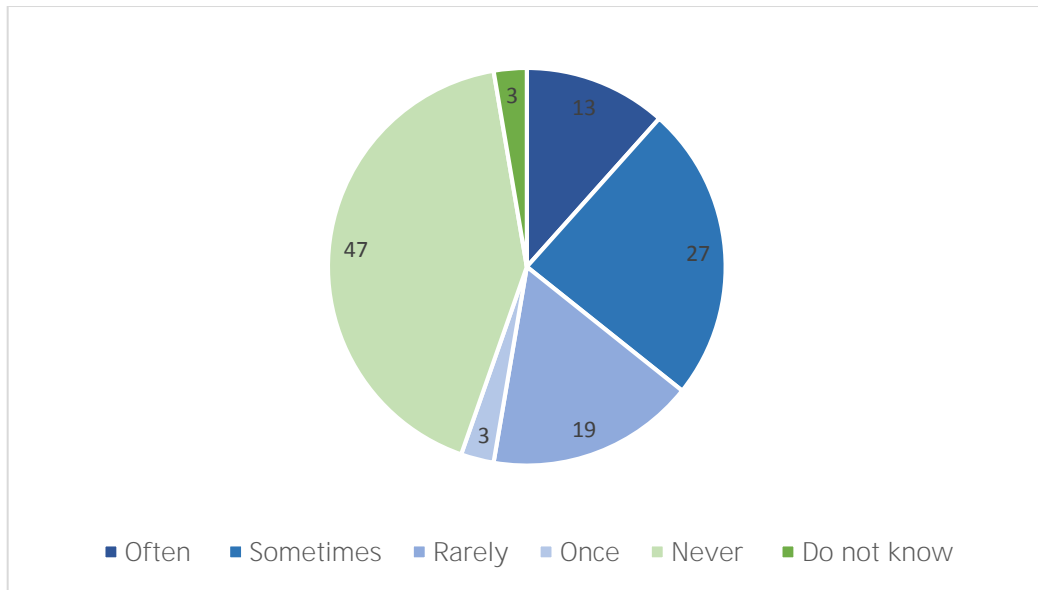
(Representative of civil society organisation, EU)

“The mean verbal or written threats are produced due to our work with irregular migrants and refugees and also our awareness campaign against trafficking. Nevertheless, we never considered them intense enough to be concerned by them.”

(Representative of civil society organisation, EU)

² UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, available at <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>

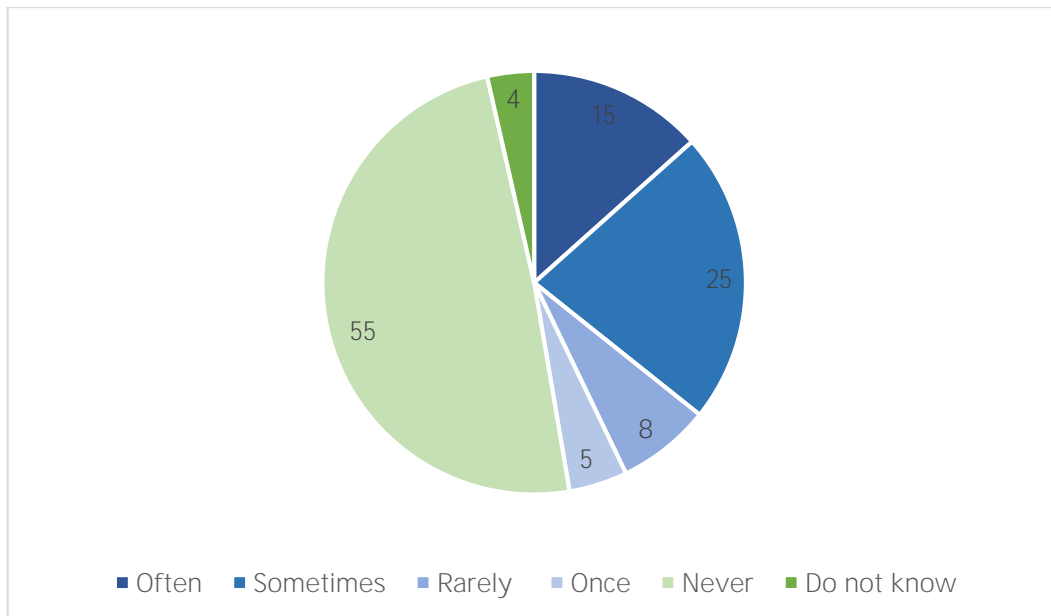
Figure 2: Experiences of verbal and online threats and attacks



Note: Question: "Has any of your employees/volunteers been threatened and/or attacked (verbal or written, including online) in relation to their work for your organisation, in the last three years?" (N=112)

Source: FRA, 2018

Figure 3: Experiences of being targeted by negative media reports/campaigns



Note: Question: "Has your organisation been the target of negative media reports/campaigns in the last three years?" (N=112)

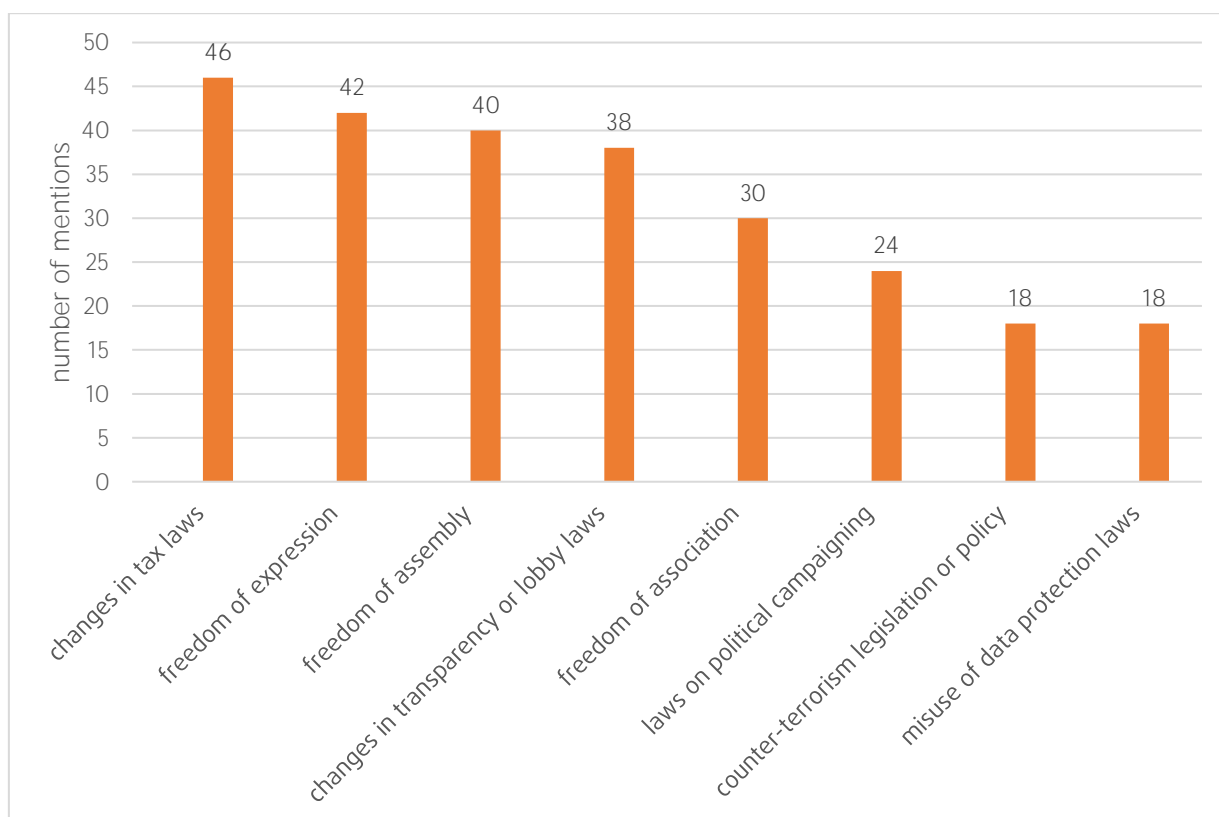
Source: FRA, 2018

3. Legal challenges

Civil society organisations need an enabling regulatory environment that does not unnecessarily or arbitrarily restrict their activities. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, reminds, under Article 2, Member States of **their duty to create “the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”**.

FRA’s 2018 civil society report found a number of challenges in the regulatory environment – certain restrictions to the freedoms of association, assembly and expression, including recognition or registration of CSOs, transparency laws and lobbying laws, tax laws, counter-terrorism laws, or entry restrictions on non-EU nationals seeking to engage in human rights work in an EU Member State. Member States have legitimate interests in adopting legislation and administrative rules that might affect civil society organisations; in practice, however, even if not meant to negatively affect CSOs, such measures can have an undue impact on them and hence have a chilling effect. This is why FRA recommends in its report that Member States

Figure 4: Types of legislation creating challenges to CSOs



Note: Question: “Has your organisation been challenged due to... [any of these issues]?”
(N=123, multiple answers)

Source: FRA, 2018

and the EU should pay increased attention when drafting and implementing legislation in areas which potentially (directly or indirectly) affect civic space, to ensure that their legislation does not place disproportionate requirements on civil society organisations and does not have a discriminatory impact on them.

The vast majority of the CSOs who completed the online consultation say that in the last **three years they were “sometimes” or “often” affected by changes in the legal framework**, with only one in four organisations saying such changes have not affected them. The type of legal change that was mentioned most as affecting CSOs concerns legislation on taxation, freedom of expression and assembly, and transparency or lobby laws.

4. Finance and funding

Civil society organisations need financial resources to cover their operational costs for projects and campaigns, as well as their overhead and infrastructure costs. Fundraising is a crucial activity for non-profit organisations which rely on a range of sources ranging from membership fees, service provision, sale of promotional material, as well as grants and donations from the public and private sector or individuals.

The legal framework regulating the operation of CSOs and government policies on grants have a significant impact on the ability of CSOs to work effectively. In this context, Article 13 of the UN Declaration on Human Rights Defenders³ refers to the right of everyone, individually and in association with others, to **“solicit, receive and utilise resources” to promote and protect human rights**.

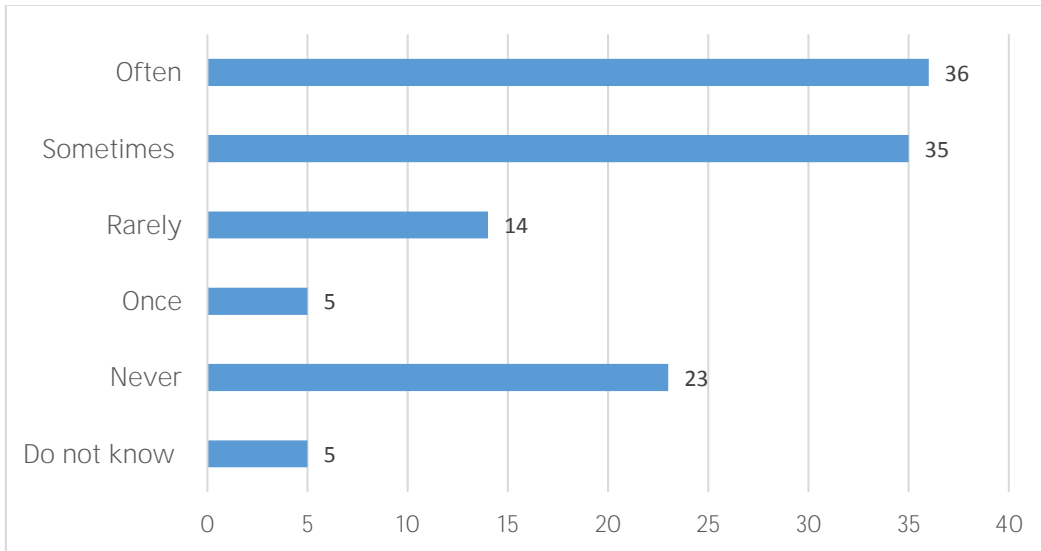
FRA’s 2018 report on the challenges facing civil society organisations identifies a range of barriers in accessing funding, from decreasing funding to a shift in funding away from advocacy to service delivery, and (over)dependence on government funding or reliance on only one main donor. The report mentions a range of challenges, such as burdensome application and reporting procedures, the short-term nature of funding, co-financing requirements, and the lack of core (infrastructure) funding. This is why the report recommends that EU institutions and Member States should ensure that funding is made available for CSOs **working on the protection and promotion of the EU’s founding values**, including for small grassroots organisations. Such funding should cover, as appropriate, a variety of activities, such as service provision, watchdog activities, advocacy, litigation, campaigning, human rights and civic education and awareness raising.

The consultation results show that in the last three years, three quarters of the responding organisations faced, often or sometimes, obstacles in accessing resources/funding. The consultation asked participating CSOs to select from this range up to five barriers. Most selected the overall non-availability of funds for their activities, followed by limited internal administrative capacity to apply for public funding, difficult

³ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>

application procedures for accessing funding, and lack of funding for infrastructure/overhead costs.

Figure 5: Obstacles in accessing resources/funding (Number of organisations)



Note: Question: "In the last three years, has your organisation experienced obstacles in access to resources/funding?" (N=118, multiple answers)

Source: FRA, 2018

Figure 6: Main barriers to funding



Note: Question: "Please select up to five barriers to funding that your organisation faces" (N=118)

Source: FRA, 2018

Our main problem is lack of core funding. [...] With no core staff we are voluntary managers for employees, which is challenging. [...] Lack of such funding results in a huge stress within the organisation [...].”

(Representative of civil society organisation, EU)

The consultation also found that almost half of the CSOs who participated would appreciate funding for activities related to education and awareness raising, as well as advocacy campaigns for which CSOs consider that funding is rarely available. The new [EU Justice, Rights and Values Fund](#)⁴ largely reflects the activities mostly

selected by the CSOs surveyed, such as awareness raising, monitoring and analysis, and fostering mutual learning.

5. Nothing about us without us

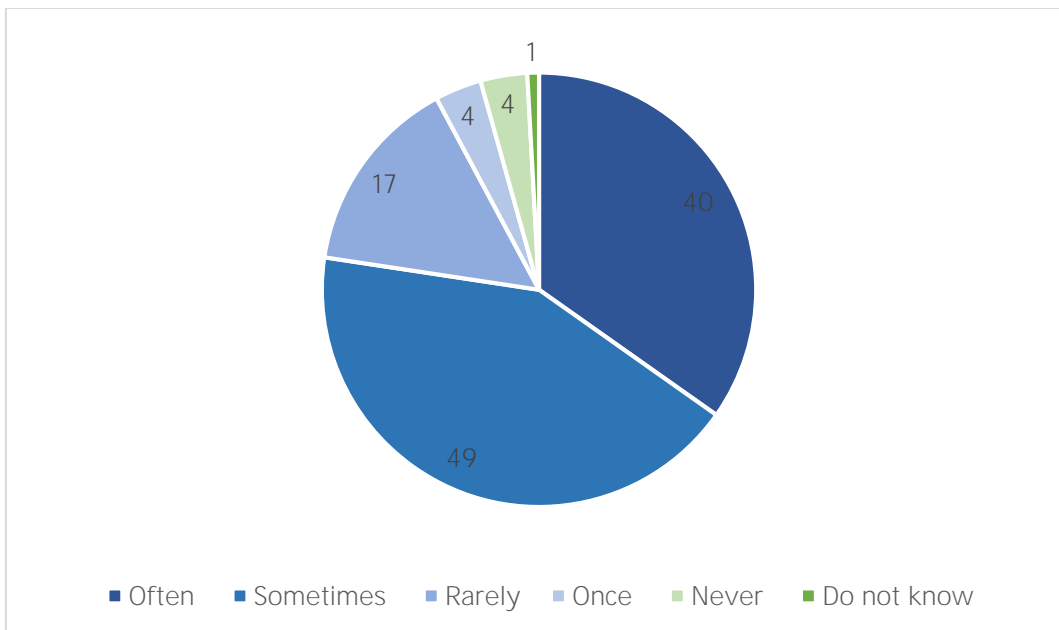
People’s engagement in political life enhances democratic legitimacy, which the EU Treaties reflect. Article 11 of the Treaty on European Union (TEU) specifies that EU institutions “shall, by appropriate means, give people and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action” and “shall maintain an open, transparent and regular dialogue with representative associations and civil society”. The Council of Europe has developed useful guidelines for civil participation in political decision-making, which its Committee of Ministers adopted in September 2017.

FRA’s 2018 report points to a number of obstacles and challenges regarding the access of civil society organisations, as well as the public, to the policy- and decision-making process. These include the limited access to information on policy or legal initiatives, the lack of minimum standards or clear rules on implementing the right to participation, as well as the lack of time, missing skills and proper methodology on the side of public authorities of how to involve stakeholders in law and policymaking in a meaningful and effective way. A diverse range of different models and practices for consultation for legislative initiatives and participation in decision making processes can be found across the European Union at different levels of governance, from the EU to the national and local levels. The report recommends that EU institutions and Member States should maintain an open, transparent and regular dialogue with CSOs active in the area of human rights, and provide sufficient time and human and financial resources for meaningful and effective participation processes. Public authorities could also make use of the newly adopted Council of Europe ‘Guidelines for meaningful civil participation in political decision-making’.

The consultation finds that 89 out of the 115 CSOs that replied to this question say that they have “often” or “sometimes” participated in public consultations in the past three years either online, at meetings or through other means. Nevertheless, few participating CSOs scored the quality and overall impact of these consultations as “very high” or “high” and most considered them “acceptable”.

⁴ The European Commission proposed in May 2018 a new funding mechanism, the [EU Justice, Rights and Values Fund](#) to support actions by different actors, including CSOs.

Figure 7: Participation in public consultations



Note: Question: “Has your organisation participated in public consultations for law and policy making in the past three years – either through online consultations, meetings or other means?” (N=115)

Source: FRA, 2018

CSOs are not always invited to participate in public consultations. When they do participate they face a range of different challenges. Almost all CSOs who responded to the consultation faced challenges in the past three years as regards their involvement in consultations, for example a lack of feedback on the outcomes and impact of their contribution or ineffective procedures, in particular concerning the time given to develop their input.

How the online consultation was conducted

The online consultation complements information in FRA’s report on [Challenges facing civil society organisations working on human rights in the EU](#) (January 2018). The questions asked were discussed with the Fundamental Right Platform’s [Advisory Panel](#), as well with relevant international and European institutions. In total, 136 civil society organisations from the agency’s [Fundamental Rights Platform database](#) responded anonymously to the survey, which was open between 4 September until 4 October 2018. Respondents were mostly NGOs, working on a broad spectrum of different human rights issues across the EU. Some are European umbrella organisations, but most are based in different EU Member States and the Former Yugoslav Republic of Macedonia. The survey was available in English and its questionnaire can be found on [FRA’s website](#). Organisations could add comments, a few of which are presented here as quotes.

FRA opinions: Challenges facing civil society organisations

In its 2018 report on *Challenges facing civil society organisations working on human rights in the EU*, FRA issued the following opinions:

1. *Member States and the EU should pay increased attention when drafting and implementing legislation in areas which potentially (directly or indirectly) affect civil society space, including freedom of expression, assembly and association, to ensure that their legislation does not place disproportionate requirements on civil society organisations and does not have a discriminatory impact on them, thereby diminishing civil society space. In so doing, they should fully respect applicable EU and relevant international treaty law.*
2. *The EU and Member States should ensure that lobbying regulations and transparency laws and their application comply with applicable EU and international law and do not disproportionately restrict or hinder human rights advocacy – including during election periods, such as for European Parliament elections.*
3. *EU institutions and Member States are encouraged to ensure that funding is made available for CSOs working on the protection and promotion of the EU’s foundational values of fundamental rights, democracy and the rule of law; including for small grassroots organisations. Such funding should cover, as appropriate, the variety of activities of CSOs, such as service provision, watchdog activities, advocacy, litigation, campaigning, human rights and civic education and awareness raising.*

As part of the free movement of capital, CSOs should be free to solicit, receive and utilise funding not only from public bodies in their own state but also from institutional or individual donors, and public authorities and foundations in other states or from international organisations, bodies or agencies.

4. *Member States and EU institutions should make sure that organisations that represent persons with disabilities are provided with funding, including for personal assistance, reasonable adjustments and support, to enable them to fulfil their role under the Convention on the Rights of Persons with Disabilities (CRPD).*
5. *The European Commission should further improve the availability of information regarding existing funding schemes by ensuring easy one-stop-shop overviews of funding made available to CSOs that work in the field of fundamental rights; by promoting its [one-stop-shop portal on funding possibilities](#); and by expanding its [database on projects funded in different areas](#) to highlight particularly successful and impactful projects.*

The European Commission should consider adopting guidance for Member States clarifying the applicability of the four ‘fundamental freedoms’ under the EU common market regime to CSOs, including foundations and philanthropic organisations.

6. *The European Commission and Member States should consider favouring multi-annual and core funding over short-term project-based funding, which would allow for a more sustainable basis for the work of CSOs as well as long-term planning. For the sake of more effective application procedures, two-step procedures could*

be used more frequently, where initial applications are short, and only preselected projects from the first round are required to deliver a full application file.

Audit and reporting requirements placed on CSOs and other associations should be proportionate to public funding made available and to the size and structure of the receiving organisation. In the context of co-funding, the requirements should be proportionate and take better account of the scope of projects and the type of organisations applying.

7. *[...] EU institutions and Member States should maintain an open, transparent and regular dialogue with CSOs active in the area of human rights to guarantee that EU legislation and EU policies as well as national legislation and policies implementing the latter are in line with the EU Charter of Fundamental Rights.*

Where relevant rules in support of CSOs' active participation in human rights are already in place, authorities should ensure that these are implemented in practice. This involves making available adequate human and financial resources to allow for proper participation processes, and providing public servants with training on, and sufficient time for, engaging such organisations. [...] Full use should be made of the newly adopted Council of Europe 'Guidelines for meaningful civil participation in political decision-making'.

8. *Member States should refrain from the stigmatisation of human rights CSOs and their members. Moreover, they should actively condemn any crimes – including hate crimes – committed against CSOs and their members and fully implement their positive obligations under international law and applicable EU law to protect CSOs and their members. Data on hate crimes against human rights CSOs should be collected and published.*
9. *The EU should consider supporting the establishment of an appropriate space for exchange and dialogue to promote the support of civil society actors engaged in the protection and promotion of fundamental rights in the EU. This would also allow for an enhanced regular dialogue between civil society organisations and the EU institutions.*

FRA's 2018 Fundamental Rights Forum: Discussions on civic space

At FRA's [Fundamental Rights Forum](#) in September 2018, six sessions explicitly looked at civic space issues: how EU law can protect civil society space; how to promote meaningful citizen participation in public affairs; how to change the narrative on civil society; the role for businesses in supporting civil society space; how to support strategic litigation; and working with different allies.⁵ A number of other sessions and plenary contributions also echoed this topic. Forum participants argued that across the EU, civil society is not given sufficient funding and legal protections needed to operate **freely and independently**. The Forum's [Chair's Statement](#) concludes that: "Today we see not only human rights violations, but the rejection of human rights protection systems as a whole. [...] Vital components of rights-respecting societies have been attacked. [...] In several parts of Europe, civil society is denied the funds and legal protections needed to operate freely and independently. Politicians, even from mainstream parties, have attacked the legitimacy of the justice system and reduced the meaning of democracy to majority voting."

Regarding legal challenges, one of the main points highlighted was that EU law could and should be used better to support and protect civil society space. At the same time, responses should not be limited to legal actions – enhancing education, building trust and promoting independent judiciary are prerequisites.

Threats to the 'safe space' of civil society organisations were also discussed, mostly in regard to negative narrative and smear campaigns, as well as the need to connect better with allies and the own support base, and perceived digital threats. More broadly speaking, "how to communicate human rights" was one of the central topics at the Forum.⁶

The many challenges in identifying and accessing funding came up across many different sessions, including the need for funding for different types of activities beyond service delivery, such as notably also campaigning and advocacy work, as well as capacity building and strategic litigation, and the importance of core funding. EU plans for funding for strategic litigation as well as the new EU Justice, Rights and Values Fund were widely welcomed.

The Forum explored access to the decision-making from several angles. Participants discussed how civil society can best engage with public authorities amplifying the voices of those most excluded and marginalised, giving them a real say in improving their own lives. Examples given showed how human rights 'self-advocacy' brought attention to specific issues, shifted public perception, improved implementation of laws and policies or influenced policymakers.

⁵ Detailed reports from each of these sessions can be found on the Forum's website: www.fundamentalrightsforum.eu

⁶ See FRA's [10 keys to effectively communicating human rights](#), Luxembourg, Publications Office.

Overall, the discussions at the Fundamental Rights Forum highlighted that CSOs need – beyond funding, legal support and protection – more support in connecting for peer exchange and learning, as well as more empowerment and capacity building on a range of issues, including on how to use EU law for protecting civic space and freedoms, how to find and access funding, communication, digital and physical safety, self-care, or participatory community engagement.

The Chair's Statement calls on the EU and its Member States to ensure that civil society organisations, including women's and youth organisations, are fairly regulated, adequately funded and that their space to work is protected and supported politically, with particular attention to grassroots organisations that are closer to the people.

FRA's Fundamental Rights Forum is a unique space for dialogue on the pressing human rights challenges in the EU. It is an opportunity to engage in new conversations and shape critical human rights agendas. The agency has organised the Forum in 2016 and 2018. The last Forum brought together over 700 human rights champions who delivered concrete calls to action that could help bring about change and counter the many threats facing human rights in Europe today. The Forum's Chair's Statement captures all these calls (see FRA, [Fundamental Rights Forum Chair's Statement](#), Vienna, October 2018).

Further information:

The following FRA publications offer further information on the themes explored in this conference paper:

- *Fundamental Rights Forum 2018 - Chair's Statement*, <http://fra.europa.eu/en/publication/2018/chairs-statement-2018>;
- *Challenges facing civil society organisations working on human rights in the EU*, <http://fra.europa.eu/en/publication/2018/challenges-facing-civil-society-orgs-human-rights-eu>
- *Challenges facing civil society organisations working on human rights in the EU – Summary*; <http://fra.europa.eu/en/publication/2018/challenges-facing-civil-society-organisations-working-human-rights-eu-summary>

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